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THE RIGHT TO WORK IN UKRAINE: FROM IMPERIAL PRACTICES TO THE EUROPEAN STANDARDS

Abstract

Ukraine has gone a long way in developing the right to work. The lack of own statehood for a long period led to the fact that labour relations were regulated by the legislation of empires, which included Ukrainian lands. ***The purpose of the article*** *is to trace the genesis of the right to work in Ukraine from the beginning of its normative consolidation in the 19th century to the modern stage of bringing national legislation to European standards.* ***Scientific novelty****: for the first time, an analysis of the evolution of labour rights in legislation from the imperial acts to the present was carried out, the reasons for changes in the field of labour legislation were analysed.* ***Methodology****: the application of problem-chronological, comparative-historical, historical-legal methods made it possible to follow the genesis of the right to work in Ukrainian legislation from the imperial experience to the present. The combination of historical and jurisprudential methods contributed to the systematic examination of the problem, made it possible to follow the influence of the legal component on history, which determined the novelty of the research.*

Conclusion*: The adoption of imperial legislation was conditioned by the deepening of capitalist relations, but it was limited in nature and did not adequately ensure the rights of workers. Soviet legislation regulated labour relations in more detail. Democratic principles were proclaimed, which, however, had a declarative nature, which was confirmed by the legislative*

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consolidation of forced labour, discrimination in the field of labour relations. With the declaration of independence in Ukraine, labour relations were restructured on the basis of the market, but the Code of 1971 is still in force. With the signing of the Association Agreement with the EU in 2014, Ukrainian labour legislation is being brought closer to European standards.

Key words: *the right to work, labour relations, labour law, code, law.*

Introduction

The development of the rule of law in Ukraine and the prospects of joining the European Union (hereinafter referred to as the EU) require the reform of labour relations. The entry of our state into the European political, economic and legal space is possible under the conditions of implementing specific measures to adapt Ukrainian labour legislation to European law. At the same time, it is important not to lose the specifics of national legislation, which are connected with the cultural-historical, political and economic features of the development of our state. Therefore, the evaluation of the historical experience of ensuring and implementing the right to work will allow more effective improvement of modern labour legislation, taking into account the gains and miscalculations of the past.

To date, Ukraine has taken a number of successful steps in the direction of bringing national labour legislation closer to EU standards, but the reform process is far from over. During 1991–2021, a significant number of normative legal acts were adopted that regulate the issue of the right of workers to work, amendments were made to the Code of Labour Laws of Ukraine (hereinafter - Labour Code) (Kodeks zakoniv 1971). However, some issues in the field of the emergence and implementation of the right of workers to work still remain outside the boundaries of legal regulation, in particular the issue of repatriation of workers, the expansion of the scope of contractual labour regulation, gender equality and the problem of mobbing.

Various aspects of labour relations, both in the historical and contemporary context, were dealt with by a number of scientists. In particular, the Soviet researcher S. Shelymagin (Shelymagin. 1952) carried out an analysis of factory legislation of tsarist Russia, examining the content of its main acts. The evaluation of legal norms was carried out by the author from the point of view of communist ideology, therefore the

researcher focuses on the class struggle, and not on the meaning of legislation regarding the right to work for an individual, the employee.

O. Reent carried out a rather detailed examination of the struggle of workers for the improvement of their position on the territory of Ukraine during the imperial era. The scientist described the difficult working conditions, labour strikes, and the trade union movement (Reent O. P. 2016. S. 174-175). However, the author only slightly touched on imperial legislation, not focusing on labour rights.

The socio-economic situation of workers during the NEP was studied by modern researchers O. Melnychuk, O. Movchan (Melnychuk, O. 2009, Movchan, O. 2011). They studied the daily life of workers and employees, working conditions, social insurance and medical care, but paid little attention to the normative consolidation of their labour rights.

Certain aspects of the legal regulation of the right to work during the years of Ukraine's independence were studied by such scholars as V. Zhernakov (Zhernakov. 1999. S. 55.), S. Prylypko, O. Yaroshenko. Thus, S. Prylypko and O. Yaroshenko analysed the place of the right to work in the system of human rights (Prylypko & Yaroshenko 2014).

O. Rym (Rym 2020) in her dissertation considered the influence of European Union labour law on the development of Ukrainian labour legislation. In particular, the author characterised the concept of EU labour law, its principles, structure and sources. Separately, the researcher focused on the possibilities of using means of protection of EU labour rights in national legal practice.

An important aspect of the right to work is the prohibition of forced labour. The dissertation of O. Voytenko (Voytenko 2020) is devoted to the content of the prohibition of forced labour as a principle of legal regulation of labour relations, its place in the system of principles of labour law. Models of population employment, flexible forms of employment became the subject of study in the works of V. Hnidenko (Hnidenko 2020).

Consequently, various aspects of labour legislation have become the subject of analysis in many scientific works. At the same time, it is worth tracing the evolution of labour rights in the legislative acts that were in force on the territory of Ukraine, the conditions of their adoption and the degree of implementation.

The purpose of the article is to trace the genesis of the right to work in Ukraine from the beginning of its normative consolidation in the 19th

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century to the modern stage of bringing national legislation to European standards.

Scientific novelty: for the first time, an analysis of the evolution of labour rights in legislation from the imperial acts to the present was carried out, the reasons for changes in the field of labour legislation were analysed.

Stable economic development is the basis of a strong democratic state. This is a state whose citizens can and are able to exercise their rights and freedoms of a socio-economic nature, including labour rights.

In the modern understanding, the right to work is defined as a subjective human right established by legislation, and is a guaranteed possibility of individual choice in the field of work. It can be implemented both by entering into labour relations and performing labour activities, and by refusing to participate in the latter (Hostyuk 2018: 93). Article 43 of the Constitution of Ukraine and Article 2 of the Labour Code of Ukraine establish such a right for citizens of Ukraine. The modern definition of the right to work in Ukrainian legislation meets international standards. Let's try to find out whether it was always enshrined in Ukrainian legislation, and whether it had exactly this meaning?

Right to work: the first attempts at legal consolidation

Labour legislation on the Ukrainian lands began to develop in the 19th century. At that time, Ukrainian ethnic lands were under the rule of the Habsburg and Romanov empires. Since the legal technique of enshrining human rights at that time was in its nascent stage, there was no question of enshrining the "right to work" category in the legislation of both empires as such, but acts were issued that outlined some aspects of the legal status of employees.

In tsarist Russia, relevant laws, regulations, and rules began to be issued in the 80s of the 19th century. Their adoption was conditioned by the intensive development of capitalism, the need to regulate relations between the employer and the employee, and the strengthening of the labour movement. This is, for example, the Law of 1882 "On Minors Working in Factories, Factories and Manufactories" (Zakon, 1886, S. 265-266.), "Rules on the Supervision of Factory Industry Establishments and on the Relationship between Manufacturers and Workers" 1886 (Pravyla, 1886, S. 262-270.), the Law "On the duration and distribution of working time in factories and factories" of 1897 (Zakon, 1886, S. 265-

266.), etc. It should be noted that the legislation was adopted with the aim of alleviating social tension and preserving the autocratic regime, therefore it was of a limited nature and did not adequately ensure the rights of workers.

The revolution of 1905-1907 forced the authorities to resort to partial democratisation. The manifesto of October 17, 1905 declared freedom of thought, speech, assembly, and association (Vysochayshiy manifest, 1909. S. 150-151). The next step was the block of legislative acts on the social security of workers and the Decree "On temporary rules on societies and unions" of 1906 (Ukaz. 1906. S. 308.). The latter became an impetus for the expansion of the trade union movement, as it legalized trade unions in a number of industries. However, it contained numerous prohibitions and restrictions. During the period of reaction, acts were put into effect that limited strikes, trade union meetings, criminal liability was assumed for violation of trade union legislation (Mahas-Demydas, Y., Rudnytska, O. 2019. S. 64-73.)

The legislation of the Austro-Hungarian Empire was more progressive. In particular, trade unions were legalized back in 1867, and in 1870 they were granted the right to strike (Molchanov V. 2018. S. 90-91)

Despite the limitations of labour rights in both empires, their legislation included not only imperative, but also dispositive norms. Thus, on February 1, 1905, a collective agreement was concluded on the territory of Ukraine for the first time on a legal basis between the board of the Russian Steam Locomotive and Mechanical Society and the director of the Kharkiv Steam Locomotive Plant, on the one hand (employers' union), and a group of authorized persons from the workers, on the other. In this contract, the rights, and obligations of the parties, in particular, of the elected workers' commission, were established. The latter received the right to analyse conflicts between employees and the administration, to find out the reasons for the dismissal of workers, to participate in the consideration of questions about changes in the rates of contract works, and also, if necessary, to conduct negotiations with the director of the plant. On February 11, a similar agreement was signed by the owners of Kharkiv printing houses and their labour teams. The same agreement was signed between the administration of the Helfrich-Sade factory and the workers in August 1906. The texts of the collective agreements contained obligations regarding the length of the day and

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vacations, production standards, fines, wages, labour protection, sanitary and hygienic conditions at work (Reent O. P. 2016. S. 174-175).

In general, although certain labour rights were enshrined in imperial legislation, the situation of workers remained difficult. The arbitrariness of the administration and poor sanitary and hygienic working conditions, as well as the low level of remuneration, etc., were common. These factors made it impossible to protect the rights and socio-economic interests of employees. The unwillingness to listen to the majority of the population, to democratize the state system, and to ensure their economic and social rights ultimately led to the collapse of empires.

Soviet heritage

The Bolsheviks declared the establishment of a new regime with maximum protection of the legal rights and interests of workers. During the entire period of its existence, the USSR positioned itself as an advanced state with the "most fair" social system. Was it really like that?

Unlike the previous empires, the Bolsheviks understood the importance of detailed regulation of labour relations, therefore, in 1918, the Code of Labor Laws of the RSFSR was adopted (Kodeks zakonov o trude i deklaratsiya prav trudyaschegosya i ekspluatiruemogo naroda, 1920, c. 32). In accordance with the treaty on the military-political union, the latter's effect was extended to the territory of Ukraine.

However, the content of the legal novellas did not correspond to the declared principles of justice and democracy. The specified Code, as well as the 1919 Constitution of the Ukrainian SSR, proclaimed not the right, but the duty to work. "The one who does not work does not eat", is the slogan that was directly enshrined in the Constitution (Konstytutsiia USRR 1919. 2001). The civil war and the policy of "war communism" left an imprint on the legislation. Workers were forcibly attached to enterprises and became military mobilized, which was established by the Decree of the RSC of the USSR "On general labor obligation" dated January 29, 1920 (Zbir zakoniv I rozporyadzhen robItnicho-selyanskogo uryadu Ukrayini, 1920, ст. 249). Unemployment (labour desertion) was recognized as a crime (Rudnytska & Rudnytska 2020: 48).

During the period of NEP, the Soviet authorities adopted a large number of normative legal acts regarding the regulation of the legal status of workers and employees. The Code of Labour Laws of the USSR of 1922 (Kodeks zakonov o trude, 1922) established new principles for regulating labour relations, in particular, the procedure for hiring and

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conscription of citizens, working time and rest time, the basis and amount of payment for work, guarantees and compensations for employees on duty, the procedure for resolving labour disputes, social insurance.

Chapter XV "On professional (production) unions of workers and employees and their bodies at enterprises, institutions and organisations" was included in the Labour Code of 1922, which established the legal status of trade unions for the first time in Soviet labour law.

In general, a component of the NEP was a certain democratisation of labour legislation: the labour market was partially renewed, the labour obligation was replaced by a labour tax, and state social security and social insurance for employees were introduced. At the same time, labour relations were built on the basis of collectivism, the rights, and freedoms of an individual employee as a person with individual needs and interests were not even brought up for discussion. Thus, already at the very beginning of its existence, the activity of trade unions was focused not on protecting the rights of the employee, but on ensuring the interests of the state.

At various stages of the existence of the USSR, both forced labour and discrimination on various grounds (property, ethnic origin, religious views, etc.) were legislated. For example, the instructions of the Central Committee of the USSR dated September 28, 1926 defined the categories of persons who lost the right to receive unemployment benefits for political reasons: persons who belonged to the class of claimants, former officers and government officials of the white armies, employees and agents of the police, gendarmerie, ministers of religious cults, etc. (Rudnytska & Rudnytska 2020: 48).

Art. 14 of the Constitution of the USSR of 1929 continued to consider work not as a right, but as a duty of all citizens of the republic (Konstytutsiia USRR 1929). An interesting metamorphosis took place in the Constitution of the Ukrainian SSR 1937. Art. 12 again contained the slogan "the one who does not work does not eat", however, Art. 117 proclaimed: "Citizens of the Ukrainian SSR have the right to work, that is, the right to receive guaranteed work with payment for their work in accordance with its quantity and quality" (Konstytutsiia URSR 1937). So, for the first time in Soviet legislation, the concept of "right to work" was introduced. However, freedom of choice – to work or not – was not discussed, which gave the specified norm a declarative nature.

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In the course of World War II and post-war reconstruction, the norms of the labour legislation were not changed or temporary norms were adopted. For example, the Decree of the Presidium of the Supreme Soviet of the USSR of October 19, 1940 restored the procedure for forced transfers of certain categories of skilled workers and employees. Only from the beginning of 1957 the rule that was valid until 1940 was returned, according to which the employee had the right to terminate the employment relationship, conclude and terminate the employment contract at his own will (Rudnytska 2011: 18).

In 1954, the Ukrainian SSR became a member of the International Labour Organisation, the acts of which are the means of international legal regulation of labour relations. A progressive step of the Soviet authorities was the ratification of the ILO Convention No. 95 regarding the protection of wages (Konventsiya MOP No. 95 1949). However, it was implemented only on January 31, 1961 (Ukaz Prezydiyi Verkhovnoyi Rady SRSR1961), so that is, the communist regime was in no hurry to harmonize domestic legislation with international standards, and the very fact of real changes after the ratification of the specified document raises doubts.

A separate milestone in the development of Soviet labour legislation was the 70s of the XX century, when the Fundamentals of Labour Legislation of the Union of the SSR (1970) (Osnovy zakonodavstva Soyuzu RSR 1970), the Code of Labour Laws of the Ukrainian SSR (1971) were adopted (Kodeks zakoniv 1971) and the Constitution of the Ukrainian SSR (1978) (Konstytutsiya URSR 1978) (valid until June 28, 1996).

The goal of the new Code was to ensure a high level of working conditions, comprehensive protection of the labour rights of employees. Consolidation of the specified postulates had, of course, a positive meaning, but it is worth noting that most of the tasks of this act were formulated in accordance with the communist principles of legal regulation of labour relations.

Article 38 of the 1978 Constitution of the Ukrainian SSR established the right of citizens of the Ukrainian SSR to work. It included obtaining a guaranteed job with a wage not lower than the state-established minimum amount, according to the quantity and quality of such work (Konstytutsiya URSR 1978). The formulation of the right to work in the Constitution of 1978 and the Labour Code of

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1971 was influenced by the aforementioned ILO Convention No. 95. However, as before, the right to work had a declarative nature, since the freedom of choice regarding labour activity was not envisaged. On the contrary, the resolution of the Central Committee of the Communist Party of Ukraine and the Council of Ministers of the Ukrainian SSR "On measures to further strengthen the fight against persons who avoid socially useful work and lead an antisocial parasitic lifestyle" (1973), which was in effect until July 20, 1991 inclusive, determined the need for organisations (Soviet, party, trade union, Komsomol) to take urgent measures to activate the public's activities in identifying persons who lead a parasitic lifestyle (Postanova 1973).

The right to strike was also not enshrined in legislation, in particular, the Constitution of 1978 did not provide for such a norm (Konstytutsiya URSR 1978). The Soviet authorities did not see this as a violation of the principles of democracy, but on the contrary, presented it as an advantage. Yes, in the book "USSR. 100 questions and answers", printed as a collection of typical questions of foreigners about the Soviet Union, was recommended to citizens of the USSR in response to a foreigner's question "Why are strikes prohibited in the USSR?" to answer that strikes are not prohibited, but there is no need for them, since the Soviet government under the control of trade unions already ensures a high level of implementation of labour rights (SSSR. 100 voprosov i otvetov 1980: 58). At the same time, it is known today that strikes took place in the USSR, they were brutally suppressed, and information about them was classified. For example, the most resonant is the shooting by the authorities of workers who organized a demonstration in Novocherkassk (Rostov region) in 1962. On the territory of Ukraine, strikes took place in Donetsk, Artemivsk, Kramatorsk, Odesa, etc. (Pyzhikov, Aleksandr 2002: 129). Only on May 20, 1991, the Law of the USSR "On the procedure for resolving collective labour disputes (conflicts)" was adopted, which allowed strikes as a last resort to resolve a collective labour dispute (Zakon SSSR 1991).

It is worth agreeing with the opinion of V. Khromey that the guarantee of the right to work in the USSR, including in the Ukrainian SSR, was a cover for the imposition by the state authorities of only such labour activities that were considered socially useful by the state nomenclature.

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New perspectives in the development of the right to work

In the second half of the 1980s, the USSR was gripped by a total crisis. The communist system could no longer function in its orthodox form, but the party leadership led by M. Gorbachev did not want to carry out radical reforms that would fundamentally contradict the Soviet totalitarian system. Weak attempts at cosmetic changes were made, which only accelerated the destruction of the "colossus on clay feet."

Thus, on November 19, 1986, the Verkhovna Rada of the USSR adopted the Law "On Individual Labour Activity", which laid the foundations for the development of entrepreneurship in the state (albeit with numerous restrictions, since the law allowed individual labour activity only in the time free from the main job and without use of hired labour) (Zakon SSSR 1986). In the last months of the existence of the Soviet Union, an attempt was made to expand economic freedom by adopting a number of normative legal acts, in particular the laws "On entrepreneurship" (Zakon Ukrayiny 1991b), "On employment of the population" (Zakon URSR 1991). Soon the USSR collapsed, but these acts had a significant impact on the development of labour relations in independent Ukraine, as they remained in force.

The reform of labour legislation and the retreat from Soviet methods of legal regulation of labour relations intensified with the declaration of Ukraine's independence and the transition of our country to a market economy. The basis for the legal consolidation of democratic changes was the adoption by the Verkhovna Rada of Ukraine on July 16, 1990 of the Declaration on the State Sovereignty of Ukraine (Deklaratsiya pro derzhavnyy soverenitet 1990), as well as on August 24, 1991, the Act of Proclamation of Independence of Ukraine (Akt proholoshennya nezalezhnosti 1991).

Article 3 of the Law of Ukraine "On Legal Succession of Ukraine" dated September 12, 1991 (Zakon Ukrayiny 1991a) established the legal basis for the continuation of the labour legislation of the Ukrainian SSR adopted in the 1970s and 1980s. The resolution of the Verkhovna Rada of Ukraine "On the procedure for the temporary effect on the territory of Ukraine of certain acts of the legislation of the Union of SSR" fixed the effect of certain acts of the former USSR, if they do not contradict the Constitution and laws of Ukraine (Postanova 1991).

One of such acts was the above-mentioned Law "On Population Employment". It established the right of Ukrainian citizens to freely

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choose activities not prohibited by law, including those not related to the performance of paid work, as well as a profession and place of work in accordance with their abilities (Zakon URSR 1991). Later, a ban on forced labour in any form was established, and the legal responsibility for voluntary unemployment of citizens, which was not recognized as a reason for bringing the latter to legal responsibility, was abolished.

The laws of Ukraine "On Entrepreneurship" (Zakon Ukrayiny 1991b) and "On Business Partnerships" (Zakon Ukrayiny 1991c) became the legislative acts establishing the right of citizens to engage in entrepreneurial activities. Thus, entrepreneurial activity has become a form of employment.

The transformation of labour legislation was also manifested in the adoption of the laws "On wages" (Zakon Ukrainy 1995), "On holidays" (Zakon Ukrainy 1996). The formation of market relations was also manifested in the expansion of the sphere of local rule-making, which allowed employees to take an active part in determining their labour rights. To ensure the contractual method of legal regulation of these relations, laws of Ukraine "On collective contracts and agreements" (Zakon Ukrayiny 1993) and "On the resolution of collective labour disputes (conflicts)" (Zakon Ukrayiny 1998) were adopted.

On the way to international and European standards

An important factor in the guarantee and protection of human rights was the desire to take into account international and European standards of labour legislation. The Agreement on partnership and cooperation between Ukraine, the European Union and their member states of June 14, 1994 (Uhoda pro partnerstvo i spivrobitnytstvo 1994) became the first impetus for the process of (albeit partial) harmonisation, which began in national law after the ratification of the latter. Achieving compliance of national legislation with the law of the European Union in priority areas was the main requirement of the above-mentioned international agreement.

An example of bringing legislation to international standards is Art. 43 of the Constitution of Ukraine, which states that everyone has "the opportunity to earn a living by work that he freely chooses or freely agrees to" (Konstytutsiya Ukrayiny 1996). This provision is formulated in accordance with the requirements of the Declaration of 1948 (Zahal'na deklaratsiya prav lyudyny 1948) and the International Covenant on

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Economic, Social and Cultural Rights of 1966 (Mizhnarodnyy pakt 1966).

With the adoption of the Constitution of Ukraine in 1996, the main principles of ensuring the right to work in our country were clearly defined: freedom of labor, equality of rights and opportunities, prohibition of all types of discrimination (non-discrimination), prohibition of forced labor, protection against illegal dismissal (justice).

In 1996, Ukraine signed and ratified the European Social Charter of 1961 (Yevropeys'ka sotsial'na khartiya 1961; Zakon Ukrayiny 2006). It defines basic principles in the social sphere and tells about ensuring fair, safe and healthy working conditions, freedom of association in national or international organisations to protect economic and social interests; conclusion of collective contracts.

One of the stages of the transition to European standards was the adoption of the nationwide program of harmonisation of the legislation of Ukraine with the legislation of the European Union, approved by the Law of Ukraine "On the nationwide program of adaptation of the legislation of Ukraine to the legislation of the European Union" in 2004 (Zakon Ukrayiny 2004). The program defined the mechanism for Ukraine to meet the third Copenhagen and Madrid criteria for EU membership, which includes the harmonisation of legislation, the formation of relevant institutions and other additional measures necessary for effective law-making and law enforcement.

The signing of the Association Agreement between Ukraine and the European Union in 2014 marked the beginning of a qualitatively new stage in the modernisation of labour legislation. The main goal of harmonisation is the creation of a unified legal field not only for Ukraine and member states of the European Community, but also for all subjects of market relations (Uhoda pro asotsiatsiyu 2014). In the field of labour relations, an important place today is the regulation of the prohibition of various forms of discrimination by European legislation, and not only at the workplace, but also during employment, professional training, etc. Whereas Directive 76/207/EEC of February 9, 1976 implements the principle of equality between men and women in matters of employment, professional education, promotion and working conditions (Dyrektyva 76/207/EEC 1979).

Course consistency as a key to success

It is clear that the restructuring of labour relations cannot be quick, because this industry is not isolated, it depends on other spheres of the state: the state of the economy, the system of social protection, educational space, etc. However, the norms of labour legislation have an impact on the specified industries, so its effective reform will stimulate the latter. In comparison with other countries of the post-Soviet space, this process has been somewhat delayed in Ukraine. Thus, in Georgia, Moldova, Kyrgyzstan, Azerbaijan, Kazakhstan, Uzbekistan, labour legislation has already been reformed, in particular, new labour codes have been adopted. Unfortunately, the Labour Code of 1971 is still in force in Ukraine, which still reflects the Soviet principles of legal regulation.

Currently, Ukrainian lawyers have developed two drafts of the labour code (Proekt 2019a; Proekt 2019b). One of them contains 19 principles of legal regulation of the right to work, which are fully in line with European standards. For example, the list of prohibitions against discrimination in the field of labour has been expanded, it is prohibited to terminate an employment contract due to the employee reaching retirement age or receiving the right to a pension, etc.

The adoption of the new labour code in Ukraine is an integral part of the reform of the legal system, but lawmakers have been delaying its adoption for a long time. Granting Ukraine, the status of a candidate for EU accession on June 23, 2022 is a manifestation of deep trust in our country. However, obtaining membership will not be possible without fulfilling the entry criteria, in particular bringing labour legislation to European standards.

Conclusion

The basis of a strong democratic state is its stable economic development. This is a state whose citizens can and are able to implement their tights and freedoms of a socio-economic nature, including labour rights. The issue of ensuring the human right to work takes on special importance in the conditions of European integration.

The study of historical experience makes it possible to trace the genesis of the institution of labour rights in Ukrainian legislation, to analyse the factors that influenced the content of legal norms and the consequences of their implementation. In turn, this will make it possible to take into account the shortcomings and achievements of the past in the process of reforming modern legislation.

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Labour relations have become the subject of consideration by many scientists. Some attention is paid to the situation of workers: living and working conditions, medical care, insurance, etc. Research into the state of modern labour legislation is actively being conducted. However, not enough attention has been paid to the evolution of the right to work in a historical context. The authors of the publication analysed the nature of the consolidation of the right to work in the legislation that was in force on the territory of Ukraine, from the first attempts to consolidate it to the present, the degree of its implementation and compliance with the principles of law and democracy.

The development of industrial relations, the expansion of the spheres of use of hired labour in the 19th century required the regulation of labour relations at the legislative level. This stimulated the adoption of labour legislation in the Habsburg and Romanov empires, which included Ukrainian lands. The imperial legislation of both states was aimed more at easing social tension and preserving the existing system than at securing the rights of the workers themselves. At the same time, the very fact of the legislative establishment of the status of an employee was progressive. Russian legislation lagged far behind the rest of the European states. For example, trade unions were legalized in Tsarist Russia almost 40 years later than in Austria-Hungary.

The Soviet government, as "the government of workers and peasants", announced the construction of a new, "fairest" social system. However, the declarativeness of this statement was manifested both in the content of the legal norms themselves and in the practice of organizing labour relations. The Constitutions of the Ukrainian SSR of 1919, 1919, and 1937 interpreted work as a duty to society and the state. There was no discussion of the interests of a specific person (employee). One of the components of the "war communism" policy was compulsory labour. During the period of the NEP, it was replaced by a labour tax, which did not abolish the forced nature of labour.

In general, the Soviet period of formation and development of labour legislation was characterized by the dependence of labour relations on the political will of the ruling elite. It was the communist policy that determined the basic principles of legal regulation in the field of labour. The Ukrainian SSR's membership in the International Labour Organisation in 1954 had little effect on the situation, since the Soviet leadership was in no hurry to introduce international standards. An

important stage was the adoption of the new Labour Code in 1971, but its tasks were formulated in accordance with communist approaches to the regulation of labour rights. Unlike previous Constitutions, the Basic Law of 1978 enshrined work as a right, not an obligation, but other acts provided for legal responsibility for "idleness."

During the years of "perestroika", a slight expansion of freedoms in the field of labour was carried out. In particular, individual labour activity and entrepreneurship were legalized. Such a minor deviation from communist doctrine, which denied private property, along with other factors, led to the collapse of the USSR.

The declaration of an independent Ukrainian state marked a fundamental reform of labour relations. The most representative features for it were the gradual rejection of Soviet postulates and the adoption of international and European standards.

First of all, there was a need to meet the new requirements of the labour market in the process of formation and development of market relations. That is why important legislative acts were adopted, enshrining the right to freedom of labour, as well as changes and additions were made to the current acts. The Constitution of 1996 not only established the social and economic rights and freedoms of a person and a citizen, but also established constitutional guarantees for their provision and implementation.

The beginning of a qualitatively new stage in the development of the right to work in Ukraine is connected with the ratification of the Association Agreement with the EU in 2014. In order to implement the Agreement, our state is implementing a process of harmonisation of legislation. The main task is the transformation of legal norms in accordance with European values, in particular, the settlement of problems of discrimination in the field of labour, gender equality, expansion of the scope of application of the employment contract, etc. Work on a new codification of the national labour legislation is currently underway.

Ukraine receiving the status of a candidate for EU membership imposes a special responsibility on the Ukrainian legislator. Today, we are witnessing the further consolidation of freedom of labour and important integration processes. In these conditions, it is necessary to calculate all the possible consequences of the adaptation process and to include in the Ukrainian labour legislation the norms of EU law, which

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are the most progressive and will maximally protect the right and freedom of a person and a citizen to work in domestic realities.

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Рудницька О., Магась-Демидас Ю. ПРАВО НА ПРАЦЮ В УКРАЇНІ: ВІД ІМПЕРСЬКИХ ПРАКТИК ДО ЄВРОПЕЙСЬКИХ СТАНДАРТІВ

Анотація

Україна пройшла тривалий шлях розвитку права на працю. Відсутність власної державності протягом тривалого періоду призводила до того, що трудові правовідносини регламентувалися законодавством імперій, до яких входили українські землі. ***Метою статті*** *є простежити генезис права на працю в Україні від початку його нормативного закріплення у XIX ст. до сучасного етапу приведення національного законодавства до європейських стандартів.* ***Наукова новизна:*** *вперше здійснено аналіз еволюції трудових прав у законодавстві від імперських актів до сьогодення, проаналізовано причини змін у сфері трудового законодавства.* ***Методологія:*** *застосування проблемно-хронологічного, порівняльно-історичного, історико-правового методів дозволили прослідкувати ґенезу права на працю в українському законодавстві від імперського досвіду до сучасності. Поєднання історичних та правознавчих методів сприяло системному розгляду проблеми, дозволило прослідкувати вплив юридичної складової на історію, що зумовило новизну дослідження.*

Висновки: *Прийняття імперського законодавства зумовлювалось поглибленням капіталістичних відносин, проте воно мало обмежений характер і не забезпечувало права працівників належним чином. Радянське законодавство більш детально регулювало трудові відносини. Проголошувалися демократичні принципи, які, однак, носили декларативний характер, що підтверджувалося законодавчим закріпленням примусової праці, дискримінацією в сфері трудових відносин. Із проголошенням незалежності в Україні здійснено перебудову трудових відносин на засадах ринку, проте й досі є чинним Кодекс 1971 р. Із підписанням у 2014 р. Угоди про Асоціацію з ЄС проводиться наближення українського трудового законодавства до європейських стандартів.*

Ключові слова: *право на працю, трудові відносини, трудове право, кодекс, закон.*

Rudnicka O., Magaś-Demydaś Yu. PRAWO DO PRACY NA UKRAINIE: OD IMPERIALNYCH PRAKTYK DO STANDARDÓW EUROPEJSKICH

Streszczenie

Ukraina przeszła długą drogę w rozwoju prawa do pracy. Brak własnej państwowości przez długi czas doprowadził do tego, że stosunki pracy regulowało ustawodawstwo imperiów, które obejmowało ziemie ukraińskie. ***Celem artykułu*** *jest prześledzenie genezy prawa do pracy na*

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Ukrainie od początku jego normatywnej konsolidacji w XIX wieku do nowoczesnego etapu dostosowywania ustawodawstwa krajowego do standardów europejskich. ***Innowacja naukowa:*** *po raz pierwszy przeprowadzono analizę ewolucji praw pracowniczych w ustawodawstwie od ustaw imperialnych do współczesności, przeanalizowano przyczyny zmian w zakresie prawa pracy.* ***Metodologia:*** *zastosowanie metod problemowo-chronologicznych, porównawczo-historycznych, historyczno-prawnych umożliwiło prześledzenie genezy prawa do pracy w ustawodawstwie ukraińskim od doświadczenia imperialnego do czasów współczesnych. Połączenie metod historycznych i orzeczniczych przyczyniło się do systematycznego zbadania problemu, pozwoliło prześledzić wpływ komponentu prawnego na historię, który przesądził o nowości badań.* ***Wnioski:*** *Przyjęcie ustawodawstwa imperialnego było spowodowane pogłębieniem stosunków kapitalistycznych, ale miało ono ograniczony charakter i nie zapewniało należycie praw robotników. Ustawodawstwo sowieckie bardziej szczegółowo regulowało stosunki pracy. Proklamowano zasady demokratyczne, które miały jednak charakter deklaratywny, co potwierdziła legislacyjna konsolidacja pracy przymusowej, dyskryminacja w zakresie stosunków pracy. Wraz z ogłoszeniem niepodległości na Ukrainie stosunki pracy zostały zrestrukturyzowane na podstawie o rynek, ale nadal obowiązuje Kodeks z 1971 r. Wraz z podpisaniem umowy stowarzyszeniowej z UE w 2014 r. ukraińskie prawo pracy zbliża się do Normy europejskie.*

Słowa kluczowe: *prawo do pracy, stosunki pracy, prawo pracy, kodeks, prawo.*

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